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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,864	09/05/2003	Luc Laloy	1418-137	8101

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EGBERT LAW OFFICES
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HOUSTON, TX 77002

EXAMINER

NERBUN, PETER P

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,864

Applicant(s)

LALOY ET AL.

Examiner

Peter P. Nerbun

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claims 2 and 3 are objected to for containing typographical errors. In claim 2, line 1, "out-out" should be changed to --cut-out--. In claim 3, line 2, "l" should be change to -- 1 -- since the width of the elastic band is shown as a script letter in Fig. 4.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee (U.S.P. 6,170,086) in view of Brown et al (U.S.P. 4,630,317). The patent to Lee discloses a headwear item, formed of a headdress 12, Fig. 1, fitted with a visor 14 and elastic means 18 co-operating with said headdress, characterized in that said headdress exhibits at least one cut-out 16 at least over a portion of its periphery, and in that said elastic means are provided over the a portion of the periphery of said headdress, co-operate with said headdress at least at said cut-out and remain visible at said cut-out. To construct the headwear item of Lee with the elastic means being provided over the whole periphery of the headdress and being detachable therefrom as suggested by Brown et al (at 36, Fig. 4) would have been obvious since the elastic means could easily replaced when it becomes saturated with perspiration. With regard to claim 9, note that a "band" is a structure that extends around an object. The crown of the formed headwear of Lee extends around the head of a wearer.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al (U.S.P. 4,630,317). The patent to Brown discloses a headwear item, formed of a headdress 31, Fig. 4, fitted with a visor 32 and elastic means 36 co-operating with said headdress, characterized in that said headdress exhibits at least one cut-out 35 at least over a portion of its periphery, and in that said elastic means are provided over the whole periphery of said headdress, co-operate with said headdress at least at said cut-out and remain visible at said cut-out.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter P. Nerbun whose telephone number is 571-272-4992. The examiner can normally be reached on M-F (1st Week) M-Th (2d Week).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Application/Control Number: 10/656,864

Page 4

Art Unit: 3765

Business Center (EBC) at 866-217-9197 (toll-free).

Peter Nerbun
June 6, 2005

A handwritten signature in black ink, reading "Peter Nerbun". The signature is fluid and cursive, with the first name "Peter" and last name "Nerbun" clearly distinguishable.

Peter Nerbun
Primary Examiner